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## THE ONTARIO WORKMEN'S COMPENSATION BILL

A draft workmen's compensation bill of wide scope and drastic provisions is now before the Ontario government and will form the basis of legislation at the next session of the Provincial Parliament. The eight other provinces of the Dominion are exhibiting a keen and expectant interest in the proposed Ontario act, and if successful in operation the measure seems certain to be taken as a model by several of the provinces, while influencing to greater or lesser extent the legislation of all. Following consideration during the present recess by the ministry, the organized interests most directly affected, and the general public, the matter of enacting an adequate measure of compensation for industrial accidents has been promised precedence over other new business by the Fourteenth Ontario Legislature which convenes next January in ordinary session.

The bill now under consideration is merely in draft form as it came from the hands of a royal commission of one, and the government has carefully and prudently avoided accepting any responsibility for the Commissioner's recommendations or pledging support to them or, indeed, to any particular bill. The measure has, however, been prepared by a man who is well known to be a strong power behind the present ministry, and, despite most strenuous opposition on the part of the organized employers to passage of the bill in its present form, his recommendations are certain to carry no little weight. It is impossible at present writing safely to predict the extent of amendments, except that the scope of the bill probably will be narrowed to exclude farm laborers, domestic servants, and retailers from its initial application, while the compensation benefits seem likely to be modified and reduced. Amendments are inevitable and their importance must depend upon the influence of the forces arrayed in opposition to the Commissioner's proposals. The Canadian Manufacturers' Association openly boasts that the measure cannot be enacted in its present form. Indeed, the bill is striking testimony to the challenging boldness and progressiveness of Sir William Meredith, its author.

A comprehensive liability law for Ontario to replace the inadequate Workmen's Compensation for Injuries Act, R.S.O., 1897, c. 160, and the common law recourse, has been contemplated at least since 1907. The matter was deferred over the sessions of 1908 and 1909; but under date of June 30, 1910, because of an insistent demand, a royal commission was issued to Hon. Sir William Ralph Meredith, C.J., C.P., admitted to be one of the ablest men on the Canadian bench and a former leader of the Conservative party while in opposition in the Provincial House. The Lieutenant-Governor's Commission required Sir William to make inquiries "as to the laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment, which are in force in other countries, and as to how far such laws are found to work satisfactorily."

Prior to the first sitting of the Commissioner, October 23, 1911, no great haste was exhibited, but considerable informative literature and correspondence bearing upon the inquiry was gathered by the secretary under Sir William's instructions. The investigation which heretofore had been dilatory was taken up in earnest in the fall of 1911, an approaching election, which took place December 11, possibly exerting some influence. Sir William held eleven hearings between October 23, 1911, and January 24, 1912. His first interim report bears date of March 27, 1912. In addition to recounting the detailed proceedings at the several hearings, it embodies a summary of European and Canadian compensation laws, a review of the measures enacted by the state legislatures of the United States, and briefs from the interests most directly concerned in the proposed Ontario legislation.

In the fall of 1912, Sir William made a trip to Europe for the purpose of studying at first hand the operation of the compensation laws particularly of England and Germany. That he was much impressed with the latter was frankly admitted upon his return. Hearings in Ontario were resumed without unnecessary delay.

Early this year the Canadian Pacific and other railway companies, together with the employers' liability interests, exhibited much activity in entering representations urging adoption of the individual rather than the group liability principle. Mr. S. H. Wolfe,

consulting actuary of New York and Mr. P. Tecumseh Sherman, the New York expert retained by the liability companies, were called and gave testimony favorable to the individual liability as under the English law. The Commissioner realized then, if he had not done so before, that co-operation of the big railway corporations could not be secured if he recommended a grouping system and made them jointly liable for accidents within the class. Indeed, such a recommendation would incur their united opposition, which might defeat the entire bill. The influence and political power of the Canadian railroad corporations is not one whit less than that of the American roads and relatively, perhaps, is greater. The eleventh-hour representations of the railways and liability interests indubitably are reflected in the draft bill.

The draft measure, together with a second interim report, under date of April 1, was brought down in the Provincial Legislature the following day. Mr. N. W. Rowell, K.C., M.P.P., leader of the Liberal opposition, was a persistent questioner throughout the session as to the progress of the expected bill and the government's intentions in regard to a comprehensive compensation law for the province. Political expediency is clearly evidenced in the transmission of the report and bill at the time they were given to the House during the closing days of the session. In his brief letter, Sir William promised his final report at an early date together with the documentary and other evidence and a statement of reasons for the conclusions which he had reached and which are embodied in the draft bill. In laying upon the table the second interim report and the draft, Sir James Whitney, premier of the province, assured the House that the government was fully aware of the importance of the proposed legislation and realized that it would still require careful and thorough consideration. He remarked that the Commissioner's proposals differed in important details from workmen's compensation legislation in other provinces of the Dominion and that the possible results of such divergence must be carefully canvassed before this or any bill of a similar nature was enacted into law. Meanwhile, the bill would be printed to provide a basis for consideration and discussion.

The outstanding feature of the bill in its present form is its

application to every wage-earner in the province. Sir William's first step was the removal of the employers' common law defenses. For the workers' present rights he substituted the compensation claims provided by the bill.<sup>1</sup> Persons whose employment is of a casual nature are alone excluded and the legislature itself must assume the responsibility of further exemptions. It seems not improbable, indeed almost certain, that the industries to be brought under the act at the outset will be only those specified in one or the other of the two schedules prepared by the Commissioner, the first subject to collective and the second under individual liability. The schedules embrace the wage-earners in all hazardous and non-hazardous extractive, manufacturing, and transportation industries, to the number of probably 300,000 or more. Farm laborers, retailers, and domestic servants are not placed or included in either schedule.

The bill contemplates the creation of a commission of three members, to be appointed by the lieutenant-governor-in-council and to be designated as "The Workmen's Compensation Board." Each commissioner shall hold office for ten years and then be eligible for reappointment, subject, however, to the provision that unless otherwise directed by the lieutenant-governor-in-council a commissioner shall cease to hold office when he attains the age of 75 years. The Board so constituted is given wide discretionary powers for administration of the act. Appeal from its rulings is

<sup>1</sup> SEC. 101. "A workman shall hereafter be deemed not to have undertaken the risks incidental to his employment or those due to the negligence of his fellow-workmen and contributory negligence on the part of a workman shall not hereafter be a bar to recovery by him or any person entitled to damages under *The Fatal Accidents Act* (1 Geo. V, c. 33) in an action for the recovery of damages for an injury sustained by or causing the death of the workman while in the service of his employer for which the employer would otherwise have been liable."

SEC. 102. "Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action."

Part III. "The Workmen's Compensation for Injuries Act, R.S.O., 1897, c. 160, is hereby repealed."

SEC. 15. "The right to compensation provided for by this Part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependents are or may be entitled against the employer of such workman for or by reason of any accident which happens to him while in the employment of such employer and after the — day of — 191-, and no action in respect thereof shall thereafter lie."

expressly denied.<sup>1</sup> Its affairs, adequacy of funds, etc., are to be examined annually by the provincial superintendent of insurance or his deputy. The government is to make an annual contribution toward defraying the expenses of administering the act, while the balance will be assessed against the employers contributing to the accident fund.

Schedule One embodies 44 groups of industries or of establishments in the same industry, which are made collectively liable for compensation and assessable for contributions to an accident fund under direction of the Board. The latter is given jurisdiction to rearrange classes embraced in Schedule One or to bring under group liability industries not now included in the first schedule, by transference from Schedule Two. Upon the Compensation Board, too, devolves the task of arranging schedules, subdividing classes, if such is deemed advisable, and apportioning the burden of assessment according to hazard. An additional percentage may at its discretion be charged to any employer who fails to take proper precautions for the prevention of accidents, thus affording a means of coercion so far as the provision of safety appliances is concerned. Industries in which not more than a stated number of workmen are usually employed may be withdrawn or excluded from any of the classes by the Board to facilitate administration of the act.

The bill provides that every employer must within a stipulated time and yearly thereafter transmit to the Compensation Board in prescribed form a statement showing the names of all employees and the amount of wages earned by each during the preceding financial year. Should the employer fail to furnish such information, the Board may estimate the amount of his pay-roll, leaving the employer without appeal but liable for any discrepancy between the assessed and the true pay-roll and also subject to a fine for intentional non-compliance with the requirements of the act.

<sup>1</sup> SEC. 60. "(1) The Board shall have exclusive jurisdiction to examine into, hear, and determine all matters and questions arising under this Part and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any court and no proceedings by or before the Board shall be restrained by injunction, prohibition, or other process or proceeding in any court or be removed by *certiorari* or otherwise into any court."

The Compensation Board must make an initial provisional assessment on the employers in each class of such a sum as is considered sufficient to meet the claims payable during the current calendar year, to provide a sufficient reserve for compensation payable in the future in respect to claims in each class on account of accidents happening in that year, and to meet the expenses of administration. The first assessment is to be either a percentage of the pay-rolls or a specific sum, at the discretion of the Board. Annually thereafter, the Board will levy an amount sufficient to meet the claims of the year, provide an adequate reserve behind each annuity claim, and meet the expenses of administering the act. The Board has power to distribute and apportion the burden of levies over the several classes and also among the employers in the classes or subgroups. Payment is due 15 days after notice of assessment is served.

The obvious intention of the Commissioner was to recommend a capital cost system of assessments, assessing in each year an amount sufficient to cover all claims, present or future, on account of accidents happening within the year. The general principle adopted is that of capitalized liability as against current cost, as under the German system which is urged by the employer interests. The sufficiency of reserves is, however, left to the judgment of the Compensation Board. Deficiencies may be collected by supplementary assessment. As a nominal protection, the lieutenant-governor-in-council may require additional levies to be made when, in the opinion of the cabinet, it is adjudged that the accident fund reserves are not adequate to the obligations and liabilities of the Board. Such reserves are legally trust moneys and must be so considered so far as investment is concerned.

An interesting feature of the bill is the provision that in case an employer fails to pay his assessment the Board may advise the clerk of the municipality in which the employer is assessed and the amount of such levy by the Compensation Board may be charged on the tax-rolls and levied as taxes. In such cases the collector is entitled to add 5 per cent to the amount, in consideration of his services.

Within three days after an accident which impairs the earning

power of any workman, the employer must, under penalty of a fine not exceeding \$50, notify the Compensation Board, giving prescribed details. For purposes of the proposed act, disablement arising from certain industrial diseases<sup>x</sup> is considered as an accident, entitling the victim or his beneficiaries to compensation, with provisions protecting the last employer from the full liability in certain cases and under stated conditions. Presumptions, however, favor the workman and the burden of proof is upon the employer. No waiting period is required by the bill, but compensation is not paid for injuries which do not disable the workman for at least 7 days from earning full wages. Compensation is computed from the date of disability. It is still payable in case of death or of serious disablement attributable solely to the serious and wilful misconduct of the workman.

The scale of the proposed compensation is more generous than that of any state in the Union or of European countries. The amounts and benefits follow:

A. IN CASE OF DEATH

- a) Funeral expenses to \$75.
- b) Where the widow or invalid husband is the sole dependent, a monthly payment of \$20.
- c) Where the dependents are a widow or an invalid husband and one or more children, a monthly payment of \$20, with an additional monthly payment of \$5 for each child under sixteen years, not exceeding in the whole \$40 monthly. Payments for children cease when the age of sixteen years is reached.
- d) Where the dependents are children, a monthly payment of \$10 to each child under sixteen years, not exceeding, in the aggregate, \$40.

SCHEDULE 3

Description of Disease	Description of Process
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis.	Mining.

e) Where the workman was under the age of twenty-one years and the dependents are his parents or one of them, a monthly payment of \$20, ceasing when the workman would have attained the age of twenty-one years.

f) Where the sole dependents are persons other than those mentioned above, a sum reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the Board, not exceeding in the whole \$40 per month.

In no case may compensation exceed 55 per cent of the average monthly earnings of the workman prior to his death.

B. IN CASE OF PERMANENT DISABILITY

A weekly payment during the life of the workman equal to 55 per cent of his average weekly earnings during the previous year or such lesser time as he has been with his employer now liable.

C. IN CASE OF PARTIAL OR TEMPORARY DISABILITY

A weekly payment proportionate to the impairment of earning capacity but not exceeding 55 per cent of the average weekly earnings previous to the accident. Such compensation is to be payable while the disability lasts. Pension payments may at the discretion of the Board be commuted for a lump sum.

Upon remarriage a dependent widow is entitled to two years' payments as a lump sum in lieu of her monthly compensations. Payments to her in respect to children under sixteen years continue.

The principles consistently followed by Sir William Meredith in the preparation of his draft bill are that the community should be protected from the direct care of victims of industrial accidents and of their dependents, that certain hazards, a *risque professionnel*, are incident to the various lines of industrial activity, and that to the cost of production of commodities should properly be charged reasonable compensation for industrial accidents. "This is more than compensation," he declared at one of the last sittings. "It is social legislation intended primarily to save the community at large from the burden of maintaining those incapacitated, wholly or partially, while at their employment, and the dependents of such victims." The question as to the value of a life or limbs is but a secondary consideration. The minimum compensation must insure a living income in order that the community at large, the general rate-payers, will not be burdened. It is unfair, however, that all should be treated alike. The standard of living of

the different employees must also be taken into account in the determination of reasonable compensation. The living expenses of the workers and their dependents have been adjusted to the wages of each and readjustment to a substantially lower income is difficult and would in many cases involve much hardship. If we assume that a workman and his dependents should not suffer heavy financial loss as a result of an unavoidable industrial accident, it is reasonable that compensation should equal or at least be proportional to the impairment of the worker's earning capacity. Such is the compensation creed which finds expression in the draft bill.

The compensation is to be a full charge in the first analysis on the employer, and the worker will make no direct contribution. The employer is expressly prohibited, directly or indirectly, from making any deduction from the wages of his employees on account of compensation. The right to compensation may not be waived and no agreement fixing the amount to be paid in case of accident will be valid unless approved by the Board.

The same scale of compensation and the same general provisions apply to industries which are outside the group liability scheme and which are excluded from contribution to the accident fund. Employers individually liable may be required to insure these workmen in a company or companies approved by the Board or to give satisfactory security. After periodic payments on account of permanent incapacity have been paid for six months or more, the Board may allow commutation to such a lump sum as will purchase an immediate annuity equal to 75 per cent of the annual value of such periodic payments. The Board may require commutation either by an insuring company or by the uninsured employer individually liable for compensation.

The *Fatal Accidents Act*, I Geo. V, c. 33, Ontario Statutes, will apply to all industries in the province as at present until the new measure comes into effect and then to those industries which are not included by the legislature.

The Canadian Manufacturers' Association and allied bodies, representing 80 to 85 per cent of the entire pay-roll in the province, assert that the compensation provided in the bill is excessive and beyond all reason and that the proposed schedule will place them

in an unfair position as regards competition with the employers of other provinces within the tariff wall. The principal complaint is the lack of any maximum in the provision that a workman totally incapacitated may draw throughout the balance of his life, 55 per cent of his weekly earnings at the time of the accident. In effect, it is computed that such payments might conceivably aggregate \$20,000 to \$25,000, as against \$2,000 under the Quebec compensation act, £300 in England, and \$3,000 in the state of Wisconsin. The average compensation for disability under the proposed Ontario legislation they estimate would exceed \$4,000.

In regard to the form of the bill, the following is in part an official statement issued by the Manufacturers' Association:

The real issue is not with the workingmen but with the employers' liability interests supported by the Canadian Pacific Railway and other railway companies which at a late stage in the inquiry came forward with representations in opposition to the system which had been proposed, and in favor of a system in which employers would be individually liable and would be driven to seek protection by insuring in private companies. . . .

The Association has repeatedly expressed itself as more than willing that an act of an advanced type, such as, for instance, that of the state of Washington, should be adopted, but a careful examination of the proposed bill has convinced the Committee of the manufacturers that the bill is unworkable and that its adoption would mean an unnecessary repetition of costly and unsuccessful experiments, the results of which have been conclusively proven in other countries.

On the other hand, the proposed legislation has the enthusiastic and grateful support of the organized labor interests. They see in it a measure of compensation more advanced than that of any state in the American Union and with benefits more generous by far than those of any other compensation law. But until the bill is modified and rendered reasonably satisfactory to the employer interests its passage is unlikely and its successful operation impossible. Many problems are deferred either for the legislature or the administrating Compensation Board to solve. The course of the bill in the House promises to be of no small interest to the province and to those persons everywhere who are interested in the general progress of workmen's compensation legislation.

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